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Kerry McLellan

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CANADA

EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/611,943
Filing Date: July 3, 2003
Appellant(s): MCLELLAN ET AL.

Victor Krichker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/21/09 appealing from the Office action mailed 8/19/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments **after final** rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0165729	Kuebert et al	10-2001
2004/0133446	Myrick et al	10-2003
2004/0128207	Ray	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuebert et al (2002/0165729) in view of Myrick et al (2004/0133446) as supported by the Provisional Application (60/423,045) and Ray (2004/0128207).

Re Claim 1: Kuebert discloses attempting a delivery at a primary location (see Figure 2, [0011]); if the delivery to the primary location fails, communicating from a mobile device a notification to the recipient of an upcoming delivery to a preferred redirection location (see Abstract, [0017, 0041]).

However, Kuebert fails to disclose selecting the preferred redirection location prior to delivery. Myrick discloses selecting the preferred redirection location prior to the delivery and also discloses alternate delivery locations, therefore more than one (Abstract, Figures 1-5, [0008, 0046]). From the teaching of Myrick, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kuebert's invention with Myrick's use of selecting the preferred redirection location prior to delivery in order to "deliver a package or product to an alternate delivery location (ADL) for pick up by a customer or authorized retriever (see Myrick Abstract)."

However, both Kuebert and Myrick fail to disclose the following limitation. Meanwhile, Ray discloses receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, and delivering the parcel to the alternative redirection location (see Figures 1-4, [0025]). From the teaching of Ray, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify both Kuebert's and Myrick's inventions with Ray's disclosure of a mobile device in order "for providing item delivery notification (see Ray Abstract)."

Re Claim 3: Kuebert discloses wherein the notification step comprises an email to the recipient (see [0036]).

Re Claim 4: Kuebert discloses wherein the notification step comprises a SMS message to the recipient (see [0036]).

Re Claim 5: Kuebert discloses comprising batching manual records of deliveries (see [0027]).

Re Claim 7: Kuebert discloses wherein prior to step (a), the method further comprises registering with a delivery service (see Figure 1).

Re Claim 8: Kuebert discloses wherein the registration step comprises providing the preferred redirection location to the delivery service (see [0011]).

Re Claim 9: Kuebert discloses wherein the registration step comprises providing the primary location to the delivery service (see [0011]).

Re Claim 10: Kuebert discloses wherein the registration step comprises generating an identifier unique to the recipient (see [0034, 0035, 0037]).

Re Claim 11: Kuebert discloses wherein the registration step comprises generating an identifier unique to the transaction (see [0034, 0035, 0037]).

Re Claim 12: Kuebert discloses wherein the primary location is a residential address of the recipient (see Abstract).

(10) Response to Argument

Applicant's arguments have been fully considered but they are not persuasive. The applicant argues that the following limitation is not disclosed: "receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, wherein the alternative redirection location is different from the primary location and the

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preferred redirection location.” In [0025], Ray discloses any mobile terminal such as a smart phone, PDA, or any device capable of receiving wireless data. It discloses a recipient 155 may utilize a wireless communications system 170 in order to exchange emails, or to get notifications (see Figure 2). In [0029], Ray discloses once again how notifications are sent through email. In Figures 1, 3, and 4, Ray discloses sending a notification to a recipient after a failed delivery. In [0021] of Ray, it discloses how a recipient may notify the possible senders of an address change and also discloses an alternative address, which is different from the primary location. In Figure 1, Ray discloses 2 different locations for the item to be delivered to.

Myrick also discloses receiving notifications through a mobile device in [0008, 0030] and Figure 1. Myrick also discloses receiving a notification after a failed delivery, and changing the delivery location to an alternative location which is different from the primary location (see [0034, 0036, 0048, 0059]). Kuebert discloses the ability to change the delivery address and receiving a notification after a failed delivery through a mobile device (see Abstract, [0011, 0017, 0022, 0041]).

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Fawaad Haider/

Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/

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Appeals Practice Specialist